IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1401 OF 2006

Teh Indian Bank .. ..Petitioner

Versus

Shri Bharat Champaklal Lalwani & Anr. ..Respondents

Mr.P.K.Dhakephalkar i/b J.G.Reddy for petitioner

Mr.A.K.Abhyankar i/b K.K.Nariman for respndent nos.1 and 2

CORAM : P.V.KAKADE, J.

DATE : 12TH APRIL 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. This petition is against the order passed by the lower appellate court dated 14.12.2005 discharging the notice, which was moved by the present petitioner for condonation of delay in filing the appeal against the judgment and decree dated 9th December, 2003 in T.E.& R. Suit No.308/323 of 2001. The appeal was presented on

11.3.2005 and it was barred by limitation and therefore, the notice was taken out for condonation of delay.

3. After hearing both the sides the lower court found that there was no sufficient ground to condone the delay and dismissed the notice, hence the present petition.

4. At the outset, it may be noted that the grounds mentioned for delay are to the effect that the certified copy of the judgment was applied for on 10th December, 2003 and it was delivered on 14th January 2004. The earlier advocate forwarded Xerox copy to the appellants. The said copy was forwarded to the head office as well as regional office of the appellant bank for necessary instructions to prefer the appeal. However, the Branch Manager, was transferred from the said branch and the same could not followed by him. Meanwhile, the copy was lying with the head office and regional officer for consideration to file appeal. The head office instructed to the regional office in January, 2005 to file appeal and the said communication was telephonically conveyed in the last week of January 2005. Thereafter the Branch office entrusted the papers for the filing of the appeal to the advocate on record with covering letter with request to prepare the memo of appeal. The advocate prepared memo of appeal, but it cannot be filed for want of certified copy of the judgment and decree and in all these process the

delay had occurred, which is sought to be condoned. The respondent resisted the notice, inter alia, denying the allegations and submitted that the delay was not sufficiently explained.

5. The lower appellate court was of the view that the grounds mentioned by the petitioner seeking condonation of delay were not sufficient to condone the delay and dismissed the application.

6. On perusal of the reasoning adopted by the lower appellate court it is apparent that there is absolutely no explanation of one year delay, especially if we take into account the manner in which it is sought to be explained, I am satisfied that the delay has occurred only due to sheer negligence on the part of the officers of the petitioner and hence cannot be said to be sufficient to cause to condone the delay. It may also be noted that it is an admitted position that physical vacant possession of the suit premises is already handed over to the landlord, who has taken possession without prejudice to his right to recover mesne profits under decree dated 9.12.2003.

7. Be as it may, the fact remains that there is no merits in the petition and hence it deserves to be dismissed. Hence the petition stands dismissed with no order as to costs.